

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



Excerpt from [Nebraska Legislature Online](#)

RECEIVERS

71-2084. Terms, defined. For purposes of sections 71-2084 to 71-2096:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) Director means the Director of Regulation and Licensure; and

(3) Health care facility means a health care facility subject to licensing under the Health Care Facility Licensure Act.

Source: Laws 1983, LB 274, § 1; R.S.1943, (1990), § 71-6001; Laws 1995, LB 406, § 60; Laws 1996, LB 1044, § 612; Laws 2000, LB 819, § 102. Operative date January 1, 2001.

71-2085. Appointment of receiver; conditions. The department may petition the district court for appointment of a receiver for a health care facility when any of the following conditions exist:

(1) If the department determines that the health, safety, or welfare of the residents or patients is in immediate danger;

(2) The health care facility is operating without a license;

(3) The department has suspended, revoked, or refused to renew the existing license of the health care facility;

(4) The health care facility is closing, or has informed the department that it intends to close, and adequate arrangements for the relocation of the residents or patients of such health care facility have not been made at least thirty days prior to closure; or

(5) The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency, the department believes a receiver is necessary.

Source: Laws 1983, LB 274, §2; R.S. 1943, (1990), §71-6002; Laws 1995, LB 406, §61.

71-2086. Appointment of receiver; procedure; temporary receiver; purpose of receivership. (1) The department shall file the petition for the appointment of a receiver provided for in section 71-2085 in the district court of the county where the health care facility is located and shall request that a receiver be appointed for the health care facility.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The director shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the director, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

Source: Laws 1983, LB 274, §3; R.S. 1943, (1990), §71-6003; Laws 1995, LB 406, §62.

71-2087. Receiver; appointment; effect; duties. When a receiver is appointed under section 71-2086, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver

shall not affect the rights of the owner or operator to defend against any claim, suit, or action against such owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department. A receiver shall:

(1) Take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession or the proceeds of any transfer of the assets or property and may use them only in the performance of the powers and duties set forth in this section and section 71-2088 or by order of the court;

(2) Apply the current revenue and current assets of the health care facility to current operating expenses and to debts incurred by the licensee, owner, or operator prior to the appointment of the receiver. The receiver may apply to the court for approval for payment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the health care facility or if the payment of the debts will interfere with the purposes of the receivership. The receiver shall give priority to expenditures for current, direct resident care, including nursing care, social services, dietary services, and housekeeping;

(3) Be responsible for the payment of taxes against the health care facility which become due during the receivership, including property taxes, sales and use taxes, withholding, taxes imposed pursuant to the Federal Insurance Contributions Act, and other payroll taxes, but not including state and federal taxes which are the liability of the owner or operator;

(4) Be entitled to and take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator, or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and necessary and appropriate records to the alternative placement of any transferred or discharged resident;

(5) Upon order of the court, provide for the orderly transfer of all residents or patients in the health care facility to other suitable facilities if correction of violations of federal and state laws and regulations is not possible or cannot be completed in a timely manner or there are reasonable grounds to believe the health care facility cannot be operated on a sound financial basis and in compliance with all applicable federal or state laws and regulations or make other provisions for the continued health, safety, and welfare of the residents or patients;

(6) Perform regular accountings; and

(7) Make periodic reports to the court and the department.

Source: Laws 1995, LB 406, §63.

71-2088. Receiver; powers. A receiver appointed under section 71-2086 may exercise those powers and shall perform those duties set out by the court. A receiver may:

(1) Assume the role of administrator and take control of day-to-day operations or name an administrator to conduct the day-to-day operations of the health care facility subject to the supervision and direction of the receiver;

(2) Remedy violations of federal and state laws and regulations governing the operation of the health care facility;

(3) Let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties of the receiver; and

(4) Hire or discharge any employees including the administrator.

Source: Laws 1995, LB 406, §64.

71-2089. Receiver; litigation authorized. The receiver in its discretion may, but shall not be required to, defend any claim, suit, or action against the receiver or the health care facility arising out of conditions, actions, or circumstances occurring or continuing at the health care facility after the appointment of the receiver. The receiver in its discretion may, but shall not be required to, defend any licensure, certification, or injunctive action initiated by the department after its appointment. The receiver shall not appeal or continue the appeal of any licensure or certification action initiated by the department against the health care facility before the appointment of the receiver. The receiver shall cooperate with the owner or operator in any defense undertaken by the owner or operator against any claim, suit, or action against him or her or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department.

Source: Laws 1995, LB 406, §65.

71-2090. Property and records; inspection by department. The department may inspect the health care facility at any time during the receivership, and the receiver shall cooperate with the department in any such inspection. All records required by federal or state statutes and regulations shall be kept on the premises of the health care facility and shall be available for inspection and copying by any authorized employee of the department.

Source: Laws 1995, LB 406, §66.

71-2091. Receivership; receiver responsibility; successor appointed; when. The receiver is responsible for the conduct of the health care facility during the receivership. The department may apply to the court for an order terminating the appointment of a receiver and appointing a successor receiver when violations of federal or state laws or regulations occur during the receivership or for other appropriate reasons.

Source: Laws 1995, LB 406, §67.

71-2092. Receivership; termination; procedure; failure to terminate; effect. (1) A receivership established under section 71-2086 may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

(a) Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto;

(b) By the current licensee of the health care facility, alleging that termination of the receivership is merited for the reasons set forth in subdivision (a) of this subsection, but that the receiver has declined to join in the petition for termination of the receivership;

(c) By the receiver, stating that all residents or patients of the health care facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the health care facility on a sound financial basis and in compliance with federal and state laws and regulations and asking that the court approve the surrender of the license of the health care facility to the department and the subsequent return of the control of the premises of the health care facility to the owner of the premises; or

(d) By the department (i) stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto or (ii) stating that there are reasonable grounds to believe that the health care facility cannot be operated in compliance with federal or state law and regulations and asking that the court order the removal of the residents or patients to appropriate alternative placements, the closure of the facility, and the license, if any, surrendered to the department or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department.

(2) If the receivership has not been terminated within twelve months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department. The receivership period may be extended as necessary to protect the health, safety, and welfare of the residents or patients.

Source: Laws 1983, LB 274, §4; R.S. 1943, (1990), §71-6004; Laws 1995, LB 406, §68.

71-2093. Receivership; payment of expenses. The health care facility for which a receiver is appointed shall be responsible for payment of the expenses of a receivership established under section 71-2086 unless the court directs otherwise. The expenses include, but are not limited to:

(1) Compensation for the receiver and any related receivership expenses;

(2) Expenses incurred by the health care facility for the continuing care of the residents or patients of the health care facility;

(3) Expenses incurred by the health care facility for the maintenance of buildings and grounds of the health care facility; and

(4) Expenses incurred by the health care facility in the ordinary course of business, such as employees' salaries and accounts payable.

Source: Laws 1983, LB 274, §5; R.S. 1943, (1990), §71-6005; Laws 1995, LB 406, §69.

71-2094. Action against receiver; requirements. No person shall bring an action against a receiver appointed under section 71-2086 without first securing leave of the court. The receiver is liable in his or her personal capacity for intentional wrongdoing or gross negligence. In all other cases, the receiver is liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets. The receiver is not personally liable for the expenses of the health care facility during the receivership. The receiver is an employee of the state only for the purpose of defending a claim filed against the receiver. The Attorney General shall defend or arrange for the defense of all suits filed against the receiver personally.

Source: Laws 1995, LB 406, §70.

71-2095. Receivership; acts not precluded; effect on liability. Sections 71-2086 to 71-2094 shall not:

(1) Preclude the sale or lease of a health care facility as otherwise provided by law; or

(2) Affect the civil or criminal liability of the licensee, owner, or operator of the health care facility placed in receivership for any acts or omissions of the licensee, owner, or operator which occurred before the receiver was appointed.

Source: Laws 1983, LB 274, §6; R.S. 1943, (1990), §71-6006; Laws 1995, LB 406, §71.

71-2096. Interference with enforcement; penalty. (1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of sections 71-2084 to 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident or patient of a health care facility in private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a health care facility, or (c) preserving evidence of any violations of sections 71-2084 to 71-2096.

(2) The county attorney of the county in which the health care facility is located or the Attorney General may be requested by the

director to initiate prosecution.

Source: Laws 1983, LB 274, §7; R.S. 1943, (1990), §71-6007; Laws 1995, LB 406, §72.